

## **Foundation Advice Terms of Use**

*Please read this document carefully.*

This Terms of Use Agreement (“Terms”) creates a legally binding agreement between you, as the user, (“You”, “Your”) and Foundation Advice Limited (“Foundation Advice”, “We”, “Us”, “Our” ). You accept and agree to these Terms and any additional terms, rules and conditions issued by Foundation Advice.

By accessing, downloading and/or using all or any part of the Services you consent to the collection, use, disclosure and other handling of information as described in our [Privacy Policy](#).

YOU AGREE THAT BY USING THE SERVICES YOU ARE AT LEAST 18 YEARS OF AGE AND YOU ARE LEGALLY ABLE TO ENTER INTO A CONTRACT.

You may access and use the Services in accordance with this Agreement. You agree to comply with the terms of this Agreement and all laws, rules and regulations applicable to your use of the Services. If you do not agree to these Terms, you may not access, download and/or use the Services.

These Terms replace any other prior terms that you may have signed with us and will apply to all Services that we provide to you going forward, unless expressly agreed otherwise.

We are also governed by a number of acts when providing financial advice more information can be found on the Financial Markets Authority (FMA) website [Conduct | FMA](#)

### **1. Terms to be legally binding**

Each party represents and warrants that (i) these Terms are valid, binding and enforceable against it, and (ii) it will fulfil its obligations under these Terms in accordance with all applicable laws.

### **2. Description of Services**

We offer a wide range of financial advisory and risk management services. We are not obliged to provide you with any Services beyond those that we agree to provide. Our Services provided to you may be limited to specific entities, risks or policies and may be limited in other respects by agreement with you. We may provide some or all of the following Services to you under these Terms:

- (a) access to our website;
- (b) information to contact a financial adviser;
- (c) a review of your risk exposure and insurance needs, which includes reviewing your current risks, auditing your existing insurance portfolio and researching your insurance needs;
- (d) advice about insurance products, which includes making recommendations for your consideration regarding cover, improvements or premium;
- (e) arranging, amending and renewing of insurance contracts (“Policies”) on your behalf, which includes providing you with statements of advice, insurance schedules and advising you of policy expiry dates where applicable;
- (f) assistance with insurance claims, which includes managing and administering your claim;
- (g) providing insurance policy comparisons, together with any additional services that you request, and we agree, to provide to you from time to time.

You acknowledge that we may engage the services and assistance of third-party brokers, consultants or others to assist us in arranging Policies or Services outside of our scope or legal authorisation for you (you will be advised of this as part of our process).

### **3. Provisions of Services**

As your Financial Adviser, we normally act as your representative in arranging insurance on your behalf. As part of the Services, we will make recommendations and suggestions to you regarding potential insurers and Policies based on your requirements however you acknowledge that the final choice of insurer and Policy will remain your responsibility and we accept no liability in respect of that choice.

The documents relating to your Policy detail, the precise terms and conditions relating to the insurance(s) we have arranged for you and the information contained in them is important.

You acknowledge that you are responsible for maintaining these documents and we recommend that you keep them in a safe place for as long as you might be entitled to claim under a Policy. Subject to any legal requirements, we will hold copies of Policy Schedules any related correspondence for at least seven years of the policy ceasing or you cancelling our services. After this period, we may destroy any of this documentation without further notice.

You can provide us with instructions by email or in writing using our contact details set out. We shall be entitled to rely on all written instructions without further enquiry, including email instructions, however, we accept no liability for any instructions received until we acknowledge receipt and acceptance of the instructions to you in writing.

No cover or action by us shall be deemed to be taken or given until confirmed by us in writing.

#### **4. Changes to Services**

We may change or discontinue any or all of the Services or change or remove functionality of any or all of the Services from time to time. We will notify you of any material change to or discontinuation of the Services. You will be notified of any material changes to the Service at least 40 days in advance of such change. For any discontinuation of or material change to a Service, we will use commercially reasonable efforts to continue supporting the previous version of the Service for three months after the change or discontinuation (except if doing so (i) would pose a security or intellectual property issue, (ii) is economically or technically burdensome, or (iii) would cause us to violate the law or requests of governmental entities).

#### **5. Your Responsibilities**

In order for us to be able to provide you with the Services, you: (i) must act at all times with utmost good faith towards your insurer or prospective insurer, which as a minimum requires you to act honestly toward your insurer and to not mislead or withhold information that is relevant to the insured risks; (ii) acknowledge that you have a duty of disclosure to your insurer and you must, on an ongoing basis, provide us with all material facts relating to the Policies that we arrange or seek to arrange on your behalf.

Material facts are those that would influence an insurer when they are deciding whether to accept the risk, and the terms and conditions that will apply if they do so. Failure to provide

full and accurate information may mean that your cover is reduced, cancelled, or if the non-disclosure is fraudulent, the insurer may be able to cancel the contract from the very beginning. If you are in any doubt as to what facts are considered to be material, you should disclose them to us.

You must provide accurate, complete and timely information to us. You are responsible for all information you provide in any proposal, claim form or other document. We are not responsible for checking the accuracy or completeness of any information you provide to us or any insurer. We will not be responsible for any consequence resulting from a failure by you to disclose all material facts to an insurer (including, without limitation, the possibility of your insurance policies being rendered void or limited).

If you want to vary any insurance e.g., by increasing the sum insured or adding other property, you must provide us with details of the changes you require and any other information you need to disclose to insurers. Any adjustment to the premium will be advised to you.

You must advise us or your insurers as soon as is reasonably practicable of an event or circumstance that may give rise to a claim or potential claim under your Policy/Policies. If you do not inform us or your insurers of such a claim or potential claim you may prejudice your rights under your Policy/Policies. You will be advised if you need to complete a claim form or produce documentation to support your claim.

After receiving your insurance documents, you must check them and advise us promptly of anything that does not meet your requirements. Any errors or issues should be notified to us immediately.

You must pay the premium(s), any statutory charges, government levies, taxes, GST and fees when due as set out in agreed terms. We are not obliged to send reminders to you if your premium is not paid on time although we may do so.

You must notify us promptly of any change of address or contact details. We may send all communications to you at the last address that you notified to us formally.

## **6. Remuneration**

Our remuneration is not our profit. It is the revenue from which we attend to our company affairs, pay salaries, rent, expenses, and taxes, and attend to all Services on your behalf. This remuneration is earned in various ways. Unless we tell you otherwise, in accordance with normal market practice we will be remunerated by commission from the insurer when you enter into a Policy that we arrange (including when a Policy is renewed and, in some cases, when a Policy is varied).

The commission in most cases is a percentage of your insurance premium (excluding government charges, levies, taxes and insurers policy fees). Some insurers may pay us more than others, and some may pay us more than one type of commission. The rate of commission can vary according to the type of insurance and cover provided, and the way the transaction is arranged.

In some cases, we may also receive commissions or other remuneration from an insurer based upon volume or the profitability of insurance placed across a portfolio with that insurer over a period of time.

We may also (i) pay a fee to a party who has referred you to us and pay this fee out of the commission received from insurers and/or fees you pay to us; (ii) earn a fee if we have referred you to another party that performs work for you; (iii) receive non-financial benefits from insurers such as, for example, training grants, conference fees, equipment, social functions, gifts and gratuities.

## **7 Conflict of Interest**

We make every attempt to manage appropriately any situation in which there may be a conflict of interest. Should we become aware of a situation where a conflict of interest could arise, we will disclose it to you.

## **8. Your Interactions and Restrictions**

Foundation Advice may use any data, information or materials collected or received from you through interactions with our Site and Services, in accordance with these Terms and the Privacy Notice (refer to 'Privacy' section below for more information). You are responsible for establishing your own policies (if any) with your relevant third parties as to what

information is appropriate to share as part of the Services. Furthermore, you are also responsible for the content for the information you provide and, if applicable, ensuring that you follow all legal requirements in your jurisdiction.

You will not (and will not allow anyone else) to (i) rent, lease, copy, disclose, provide access to or sublicense the Site and Services; (ii) use the Site and Services for the benefit of, or to provide any service to, a third party (unless agreed with Foundation Advice); (iii) publicly disseminate information regarding the performance of the Site and Services.

## **9. Ownership**

As between the parties, Foundation Advice owns all right, title and interest in and to the Services and anonymous/aggregate data, testimonials, and any and all patents, copyright, designs, contents, trademarks, trade secrets and other intellectual property rights related to the foregoing. No part of the Services may be distributed or copied for any commercial purpose, and you are not permitted for any purpose to incorporate the contents of the Services or any part of it in any other work or publication (whether in hard copy, electronic or any other form) without our prior written consent. You may print or download extracts from the Services only for your own non-commercial use. Further, you may not copy, use, remove or alter any trademarks or logos that appear on the Services.

## **10. Privacy**

Information collected through the Services may include your personal information. It is your sole responsibility to ensure that any information you provide us is accurate, complete and error free. We are under no obligation to confirm or validate the information that you provide to us in connection with the Services. In providing any information to us, whether in relation to you or a third party, you warrant that you have appropriate authorisation to disclose such information for the purposes it will be used for by us. You also consent to receiving marketing, promotional and other material by way of electronic messages from us that you may opt out of this at any time.

Subject to your express consent in accordance with the Unsolicited Electronic Messages Act 2007, we may enter your details into our marketing database to send you email communications with regard to our business or the insurance industry. You may revoke such consent at any time, and we will remove you from our marketing database.

Please see the terms of our [Privacy Policy](#).

### **11. Advertising**

The contents of the Services may include links to third party materials. We will not be responsible for the contents of any linked sites or be liable for any direct or indirect loss or damage suffered by you from accessing, using, relying on or trading with third parties. The linked sites are provided to you only as a convenience, and the inclusion of any linked site does not imply any endorsement of it by us or any association with its operators.

Any dealings with any advertiser appearing on the Services are solely between you and the advertiser or other third party. We are not responsible or liable for any part of any such dealings or promotions.

### **12. Testimonials**

From time to time, you may provide testimonials regarding the Services. Foundation will own all rights in such testimonials, and you waive any rights you may have to such testimonials.

### **13. Suspension and Termination**

You are free to stop using the Services at any time. We may terminate these Terms, or any Services with respect to you, or suspend or deny access to the Services or any portion thereof, if you breach these Terms, or if we cease offering some or all of the Services to our customers. Termination of these terms requires either party to give written notice of cancellation of service (“cancellation of service notice”) to the other party, such notice to be effective on the date specified in it, which may be immediately.

We may, at our sole discretion, suspend or terminate or limit your access to the Services if we reasonably suspect (i) You are in breach of these Terms; or (ii) You have undermined the security or integrity of the Services or (iii) in order to comply with the law or requests of governmental entities.

You acknowledge that providing us with a cancellation of service notice will only terminate our provision of the Services to you and it will not terminate your Policies. We are not able cancel any of your Policies without specific written and signed instruction from a

person/persons who is/are authorised as being named as policy owner/s in the Policy. This notification should include detail of the relevant Insurance company, Policy Reference and the Benefits being cancelled. You acknowledge that: (i) We may not be able to cancel a Policy without the insurer's approval; and (ii) some Policies contain a non-cancellation clause or cancellation penalties which, for the avoidance of doubt, you will be responsible for paying.

#### **14. Disclaimers**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, FOUNDATION ADVICE MAKES NO WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. FOUNDATION ADVICE WILL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES, ERRORS OR MISSTATEMENTS, OR OTHER PROBLEMS INHERENT IN THE SERVICES. WE AND OUR AFFILIATES AND LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SERVICE OFFERINGS OR THE THIRD-PARTY CONTENT, AND DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED OR EXPRESS WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE, AND THAT ANY CONTENT WILL BE SECURE OR NOT OTHERWISE LOST OR ALTERED.

Use of information and content provided through Services is at your own risk. To the maximum extent permitted by law, we are not responsible for any adverse consequences arising out of such use. The content provided through the Services has not been prepared by taking into account the particular objectives, situation or needs of any individual users. The availability of the information through the Services does not constitute a recommendation or endorsement by us or any other person regarding any particular business entity, goods, services or transaction. Nothing provided to you through the Services constitutes legal advice. You agree that we are not responsible or liable for any misconduct or non-performance by any third party. If you enter into any agreement subsequent to accessing the Services, you do so entirely in reliance on your own judgement and enquiries and not in reliance on us.

## **15. Exclusion of Liability and Indemnity**

To the maximum extent permitted by law, we exclude all liability in relation to the Services whether in contract, tort (including negligence) or otherwise, for any loss or damage however, caused (including direct, indirect, consequential or special loss or damage, or loss of profits, loss of data, loss of savings and loss of opportunity).

You indemnify us and our officers and employees, partners and associates against all costs, expenses and damages. You will take all necessary action to defend and indemnify us costs, expenses and damages incurred in connection with any claim brought by a third party against us arising from a breach by you of these Terms.

Neither party nor their respective affiliates will be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond such party's reasonable control, including but not limited to acts of God, utilities or other telecommunications failures, cyber-attacks, earthquake, storms or other elements of nature, pandemics, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

These Terms must be read subject to our obligations to you to guarantee the quality and fitness for purpose of our services under consumer protection laws like the Consumer Guarantees Act 1993 and the Fair Trading Act 1986. Nothing in these Terms overrides or restricts those obligations.

We make no representation or warranty concerning, and will not be responsible for, the solvency or ability of any insurer to pay claims and will not be responsible for the actions of any insurer or its ability or willingness to pay claims, return premiums, or meet its other financial or legal obligations. If your insurances were arranged by another party prior to our appointment: We will not be responsible for the adequacy or appropriateness of such insurances for your needs, prior to our review and the implementation of any changes we recommend.

## **16. No relationship**

These Terms will not be deemed to create a partnership, joint venture, agency or employment relationship of any kind between us and you.

### **17. Waiver and Severability**

A party's delay or failure to exercise a right or remedy will not result in a waiver of that right or remedy. If a court of competent jurisdiction holds any provision of these Terms to be illegal, invalid or unenforceable under the governing law, the remaining provisions will remain in full force and effect and will be construed to most nearly reflect the parties' intent with respect to such provision.

To the fullest extent permitted by law, the parties agree that any dispute arising out of or in connection with the Service for these Terms shall be resolved by individual court action and waive any right to have a proceeding litigated as a class action or on a consolidated basis.

### **18. Notices**

Unless otherwise specifically indicated, all notices given by you to us must be given to [info@foundationadvice.nz](mailto:info@foundationadvice.nz). We may give notice to you at the e-mail address you provide to us when you register or in any other way. Notices will be deemed given as of the day they are sent by email, messenger, delivery service, or mail (postage prepaid, certified or registered, return receipt requested), and addressed as set forth below, or to such other address as the party to receive the notice so designates by notice.

### **19. Changes to Terms**

Foundation Advice may revise these Terms from time to time and at its sole discretion. When such changes are effected, Foundation Advice will publish an updated version on the Services. The changes will become effective and will be deemed accepted by you, (i) immediately for those who register for the Services after the updated version is published on the Services, or (ii) for those having pre-existing accounts, the updated Terms will be deemed effective with your continued use of the Services.

You have rights to dispute an updated term which materially alters your rights or obligations (with exception to changes required by law) within 10 business days from the date of the new Terms being published, upon written notification to: EMAIL. Please note: Your rights and access to the Services may be temporarily disrupted until such dispute is resolved

between you and Foundation Advice. If we are unable to resolve the dispute within 30 days of your written notification of dispute, these Terms will be terminated.

## **20. Assignment**

Foundation Advice may transfer its rights and obligations under these Terms to any company, firm or person at any time if it does not materially affect your rights under it. You may not transfer your rights or obligations under these Terms to anyone else. These Terms are personal to you and no third party is entitled to benefit under these Terms except as provided for in these Terms.

## **21. Complaints and Disputes.**

If you are not fully satisfied with our financial advice service you can make a complaint by emailing [info@foundationadvice.nz](mailto:info@foundationadvice.nz) or by calling: 0800 72 22 33. You can also write to us at: 20 Florence Avenue, Orewa, Auckland 0931.

When we receive a complaint, we will consider it following our internal complaints process:

- We will consider your complaint and let you know how we intend to resolve it. We may need to contact you to get further information about your complaint.
- We aim to resolve complaints within 15 working days of receiving them. If we can't, we will contact you within that time to let you know we need more time to consider your complaint.
- We will contact you by phone or email to let you know whether we can resolve your complaint and how we propose to do so.

If we can't resolve your complaint, or you aren't satisfied with the way we propose to do so, you can contact the Insurance and Financial Services Ombudsman Scheme Limited.

Financial Services Ombudsman Scheme Limited provides a free, independent dispute resolution service that may help investigate or resolve your complaint, if we haven't been able to resolve your complaint to your satisfaction.

You can contact Insurance and Financial Services Ombudsman Scheme Limited by emailing [info@ifso.nz](mailto:info@ifso.nz) , [IFSO | Complaints | Make A Complaint](#). or by calling: 0800 888 202. You can also write to them at: PO Box 10-845, Wellington 6143.

## **22. Governing Law and Venue**

These Terms will be governed by and construed in accordance with the laws of New Zealand, and you submit to the exclusive jurisdiction of the Courts of New Zealand.

### **23. Communications**

If you have any questions or concerns in relation to the Services or these Terms, please contact us at [info@foundationadvice.nz](mailto:info@foundationadvice.nz)